

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
EMERGENCY COMMUNICATIONS	)	DA 12-523
BY AMATEUR RADIO AND	)	GN Docket No. 12-91
IMPEDIMENTS TO AMATEUR	)	
RADIO COMMUNICATIONS	)	

To the Commission:

**PETITION FOR DECLARATORY RULING, OR IN THE ALTERNATIVE,  
INFORMAL REQUEST FOR COMMISSION ACTION TERMINATING CONTROVERSY**

COMES NOW the Petitioner, JAMES EDWIN WHEDBEE (“Petitioner”) who pursuant to Sections 1.2 and 1.41 (47 C.F.R. §§ 1.2, 1.41), petitions – or alternatively, informally requests action in the nature of a petition for declaratory ruling – the Commission’s declaratory ruling terminating the matter in controversy regarding private codes, covenants, and restrictions, including but not limited to homeowner association rules (“CCR’s”) by declaring same to be in violation of Section 310(d) of the Communications Act of 1934, as amended (47 U.S.C. § 310(d)), and by declaring same to be contrary to the public safety and interest, thereby terminating CCR’s enforceability in legal proceedings regarding reasonable licensed amateur radio fixed station operation. As good cause therefor, Petitioner states the following.

[1] Petitioner is a natural-born citizen of the United States of America and a commenter in the above-captioned proceeding. Petitioner is subject to CCR’s. Petitioner is a federally-credentialed and graduate-level degreed Disaster and Emergency Manager. Petitioner is a NOAA/NWS credentialed weather spotter (CLA349). Petitioner is the amateur radio

operator for station N0ECN. Petitioner is aggrieved by CCR's and the Commission's inaction regarding those CCR's. For each of these reasons, Petitioner has standing.

[2] During the pendency of the above-captioned proceedings, 49 commenters have supported limited Commission preemption of CCR's and 2 commenters are opposed. Of those commenting, two commenters (Lamb, Franklin) are qualified physicians, two commenters (Proy, Lauser) are qualified attorneys-at-law, and a number are disaster and emergency managers (DEM officials). None of the comments in opposition to preemption come from physicians, attorneys, or DEM officials.

[3] Many of the comments filed, to date, in the above-captioned proceedings clearly illustrate that the Amateur Radio Service is the emergency communications service in the United States of America, and further, the only such service to date which has achieved the capacity to be interoperable. Yet, in spite of the Amateur Radio Service's undeniable history as the emergency communications service with interoperability, amateur radio operators are hobbled by CCR's. Past efforts to preempt CCR's have failed, largely on the premise that private contractual obligations are voluntarily entered into, and therefore, no basis for preemption exists. However, the comments filed in these proceedings suggest that not only are such CCR's often unconscionably restrictive and overly broad, but that amateur radio operators are not voluntarily entering into these obligations due to a lack of bona fide choices. As such, it is doubtful whether or not such CCR's actually represent a true contractual obligation in that the 'four corners of contract' are wanting: there is no 'meeting of the minds,' but a lack of genuine alternatives thereby creating a disability in an amateur radio operator's bargaining power in real estate

transactions. Thus, left unrestrained, in many cases CCR's are unconscionable and therefore, unenforceable. Given the Commission's statutory charge is to serve the "public interest, convenience, and necessity" over the entire nation as regards telecommunications – particularly with regard to public safety communications – the Commission has subject-matter jurisdiction over private contractual arrangements restraining licensed amateur radio service usage. Moreover, because Section 310 of the Communications Act, as amended (47 U.S.C. § 310), prohibits the transfer or assignment of a license issued by the Commission, and further because CCR's effectively amount to a transfer of control over a licensed amateur radio station from the licensee to an unqualified homeowners' association in violation of the Communications Act, unrestrained CCR's are a violation of public policy.

[4] The interests of the United States of America, victims of any disaster or emergency, and the public safety supersede the value underlying any contractual obligation restricting antennas; accordingly, such contractual obligations – whether entered into freely or otherwise – are contrary to public safety, public policy and public interest. Nevertheless, there is a need to balance legitimate property rights

[5] Contracts which are contrary to public safety, public policy, and public interest are void, ab initio; accordingly, the Commission's declaration to this effect would terminate the controversy of CCR enforcement against amateur radio operators. Therefore, for each of these reasons and those self-evident herefrom, the Petitioner is entitled to the Commission's immediate grant of this Petition, as same is in the public interest, convenience, and necessity.

[6] Amateur radio station licenses include fixed station operation. Fixed station operation is what CCR's represent a transfer of control over, and therefore, unless CCR's permit reasonable fixed station use by licensees in the amateur radio service, this controversy shall persist. Reasonable fixed station use of an amateur radio station should, at a minimum, authorize outdoor antenna facilities which are not in violation of the Commission's rules.

WHEREFORE, the foregoing considered Petitioner respectfully requests the Commission's declaratory ruling terminating the enforceability of CCR's against reasonable licensed amateur radio fixed station operation by declaring same to be in violation of public policy and particularly Section 310(d) of the Communications Act, as well as by declaring same to be contrary to public safety.

21 April 2012

Respectfully Submitted:



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